

HOUSE BILL 535

By Lamberth

AN ACT to amend Tennessee Code Annotated, Title 47,
Chapter 9, Part 5, relative to Uniform Commercial
Code financing statement filings.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-9-513, is amended by adding the
following as a new subsection:

(e)

(1) As used in this subsection (e), "public official" means:

(A) An individual who is a current or retired elected or appointed
government official, including a state, county, metropolitan, or municipal
official;

(B) An individual who is the head of a division or major unit or
department within an agency or office of the executive, judicial, or
legislative branch of state, county, metropolitan, or municipal government,
regardless of the title of the position, and who, as a substantial part of the
individual's duties, provides meaningful input on the development of
policy goals or the implementation of policy; or

(C) A high-ranking employee within the executive, judicial, or
legislative branch of state, county, metropolitan, or municipal government
who has a primary responsibility for one (1) or more of the following
functions:

(i) Public information and legislative affairs;

(ii) Fiscal, budget, and audit matters;

- (iii) Legal, security, or internal affairs;
- (iv) Information technology systems; and
- (v) Human resources.

(2)

(A) A public official who is identified as a debtor in a filed financing statement may file a notarized affidavit, signed under penalty of perjury, which contains:

(i) The Uniform Commercial Code financing statement file number of the financing statement;

(ii) The affiant's mailing address;

(iii) A statement that the affiant is a public official; and

(iv) A statement that the affiant believes that the filed record identifying the affiant as a debtor was filed without any reasonable basis or legal cause, and the affiant's factual basis for why the filed record lacks any reasonable basis or legal cause.

(B) The secretary of state shall adopt a form of affidavit for use under subdivision (e)(2)(A).

(3) Once an affidavit is filed with the filing office pursuant to subdivision (e)(2)(A), the filing office shall indicate on the Uniform Commercial Code financing statement that the underlying financing statement is "Contested – Under Review."

(4)

(A) Within three (3) business days of receipt of an affidavit filed pursuant to subdivision (e)(2)(A), the filing office shall send a copy of the affidavit, by registered or certified mail, with return receipt requested, addressed to the secured party of record for the financing statement to which the affidavit relates.

(B) The copy of the affidavit shall be deemed delivered upon:

(i) Acceptance by the addressee;

(ii) A showing that the addressee refused to accept delivery and it is so stated in the return receipt of the United States postal service; or

(iii) The United States postal service returning the affidavit as undeliverable or unclaimed.

(C) The refusal or failure of a secured party to accept delivery of the registered or certified mail, or the refusal or failure to sign the return receipt, shall not affect the validity of delivery of the affidavit, and a secured party who refuses or fails to accept delivery of such registered or certified mail shall be charged with knowledge of the contents of the affidavit.

(D) Once the filing office receives the return receipt, notice of refusal or failure to sign the return receipt, or notice that the affidavit is undeliverable, the ten (10) business days referenced in subdivision (e)(5) will commence.

(5)

(A) Within ten (10) business days of delivery of the affidavit to the secured party, a secured party who believes in good faith that the filed financing statement was filed with a reasonable basis or legal cause, may file with the filing office a petition for review by an administrative judge pursuant to the contested case procedures of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(B) A petition for review shall set forth the factual basis showing that the filed record was filed with a reasonable basis or legal cause, and shall be accompanied by a cost bond in the amount of two hundred dollars (\$200), the bond being made payable to the secretary of state.

(C) Within three (3) business days of receipt of the petition for review and cost bond by the filing office, the filing office shall forward the petition to the administrative procedures division of the office of the secretary of state, along with a request for a hearing.

(D) Within ten (10) business days of receipt of the petition for review from the filing office, an administrative law judge shall notify the parties identified in the petition of the hearing date and location.

(E) The venue for all hearings under this subsection (e) shall be Davidson County.

(F) Should circumstances require such, the administrative law judge may permit all or part of a hearing to be conducted by telephone.

(G) Nothing in this subsection (e) shall be construed as requiring the hearing to take place within the ten (10) business day period described in subdivision (e)(5)(D).

(H) The administrative law judge shall make a determination as to whether the financing statement was filed with any reasonable basis or legal cause and shall issue an order that complies with § 4-5-314(c) within thirty (30) days of the close of the record of the proceedings.

(I) Section 4-5-322 shall provide the exclusive method of review of the administrative law judge's order.

(6) If the filing office has not received a petition and cost bond from the secured party of record, within ten (10) business days of delivery of the affidavit under subdivisions (e)(5)(A) and (B), the filing office shall void and remove from the public record the financing statement, along with all other documents associated with the financing statement, including the affidavit.

(7) If, following a contested case hearing of a petition for review filed by a secured party under subdivision (e)(5), an administrative law judge determines that there is reasonable basis or legal cause for the financing statement, the filing office shall remove the "Contested – Under Review" indication from the Uniform Commercial Code financing statement and the effectiveness of the financing statement will be reflected as the original date of filing.

(8) If, following a contested case hearing of a petition for review filed by a secured party under subdivision (e)(5), an administrative judge determines that the financing statement was filed without any reasonable basis or legal cause, the filing office shall void and remove from the public record the financing statement along with all other documents associated with the financing statement upon the administrative judge's order becoming effective and no longer subject to review pursuant to § 4-5-322.

(9) In a contested case hearing of a petition for review filed by a secured party to determine whether the financing statement was filed with any reasonable basis or legal cause, the prevailing party may recover costs and expenses, including reasonable attorneys' fees that are incurred in the review action.

SECTION 2. For administrative and rulemaking purposes, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect

October 1, 2017, and shall apply to financing statements regardless of when filed, the public welfare requiring it.